IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Daniel R. McClain, Petitioner, v. Warden, Turbeville Correctional Institution, Respondent.	)	C/A No. 0:18-cv-3081-MBS **OPINION AND ORDER**

Petitioner Daniel R. McClain is a prisoner in custody of the South Carolina Department of Corrections who currently is housed at Turbeville Correctional Institution. This matter is before the court on a motion to "revisit" a motion for recusal, filed by Petitioner on September 17, 2019 , and a motion entitled a "Motion For Default" filed by Petitioner on October 24, 2019. ECF Nos. 74, 76. In Petitioner's "Motion For Default," Petitioner asserts that the court did not address his September 17, 2019 motion to "revisit" his previous motion for recusal. Petitioner originally filed his motion for recusal, entitled a "Motion for Change of Venue; Notice of Conflict of Interest" on December 12, 2018. ECF No. 9. The court issued an order on August 5, 2019 which specifically addressed Petitioner's "Motion for Change of Venue; Notice of Conflict of Interest." The court denied that motion because Petitioner did not cite to any "extrajudicial source of bias or prejudice," and dismissed Petitioner's case with prejudice. ECF No. 66 at 6. The court has thus already addressed Petitioner's motion for recusal.

Should Petitioner seek to have the court reconsider its August 5, 2019 ruling, the court declines to do so. Fed. R. Civ. P. 59(e) provides that "a motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." The Fourth Circuit Court of

Appeals has interpreted Rule 59(e) of the Federal Rules of Civil Procedure to allow the court to alter or amend an earlier judgment in three circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (quoting Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998)). Accordingly, "the rule permits a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." Pac. Ins. Co., 148 F.3d at 403 (quoting Russell v. Delco Remy Div. of Gen. Motors Corp., 51 F.3d 746, 749 (7th Cir. 1995)). A party moving pursuant to Rule 59 must demonstrate more than "mere disagreement" with the court's order to succeed on a Rule 59(e) motion. Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). Furthermore, "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of judgment, nor may they be used to argue a case under a novel theory that the party had the ability to address in the first instance." Pac. Ins. Co., 143 F.3d at 403; see also 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1 (3d ed. 1998). "In general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Id. Judgment was entered on August 5, 2019. Petitioner filed his motion to "revisit" on September 17, 2019. Thus, Petitioner's motion is untimely. Even if Petitioner's motion were timely, Petitioner has not shown a change in law, nor has he presented the court with new evidence, nor has he shown a clear error of law or manifest injustice.

Accordingly, because the court addressed Petitioner's previous motion for recusal in its August 5, 2019 order, and because the court declines to reconsider its ruling, Petitioner's motions, ECF Nos. 74 and 76, are DENIED.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Margaret B. Seymour
Senior United States District Judge

Dated: November_5_, 2019
Charleston, South Carolina